

REMARKS

This responds to the Office Action mailed on August 1, 2006, and the references cited therewith.

Claims 11, 15, 28 and 36 are amended, no claims are canceled herein, and claim 41-49 are added; as a result, claims 11-49 are now pending in this application.

The amendments made herein have been to clarify the claims and are not intended to limit the scope of equivalents to which any claim element may be entitled. The amendments to the claims and new claims have support throughout the specification, including, for example, on page 10, line 28 through page 11, line 12. No new matter has been added as a result. Applicant respectfully requests reconsideration of the above-identified application in view of the amendments above and the remarks that follow.

Interview Summary

Examiner Tawfik and Applicant's Representative, Barbara J. Clark, held a telephonic interview on October 18, 2006. Proposed new claim language was discussed. Examiner Tawfik indicated an understanding of the reasoning and claim amendments, but no agreement as to specific claim language was reached. Ms. Clark thanks Examiner Tawfik for the courtesies extended during the interview.

§103 Rejection of the Claims

Claims 11-40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wade (US 5,378,066) in view of Chalin et al. (US 3,873,735).

The Office Action asserts that Wade (FIGS. 19-20D) discloses various elements of the claims including a bag having lines of weakness, a pull-tab opener secured to the bag proximate to the lines of weakness, the pull-tab opener having a pull-tab opening integral therewith, wherein the pull-tab opening is a hole designed to be hooked with hooking means. As the Office Action admits, Wade does not disclose the step of providing suitable markings to convey instructions to pull on the pull-tab opener to access the contents within the sealed container without utilizing a pinch force, wherein the sealed container is adapted to be opened easily with

the pull tab opener by a person who follows the instructions conveyed by the markings. The Office Action asserts that Chalin discloses a similar method for providing an opening system for a container comprising the step of providing suitable markings via words to convey instructions to use the pull-tab opener to access the package contents without utilizing a pinch force, wherein the package is adapted to be opened easily by a person who follows the instructions conveyed by the markings and that it would have been obvious to modify Wade's method by having the step of providing suitable markings to convey instructions to use the pull tab opener to access package contents as suggested by Chalin, in order to make it easy and simple opening and handling such containers.

Applicant respectfully submits that the Office Action has not established the *prima facie* obviousness of the present claims. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

Furthermore, claims 12-14, 16-35 and 37-40 are dependent claims. The additional limitations provided in dependent claims cannot by themselves be rendered obvious over the cited references if the independent claim from which it depends is determined to be nonobvious.

Applicant respectfully traverses the above characterization Wade as this reference does not show or describe lines of weakness of any type in this embodiment. (See FIGS. 19-20D and cols. 13-14). Additionally, the throughhole 420 in Wade is not a hole designed to be hooked with hooking means (as an aid to opening the package) as suggested by the Office Action. Rather, Wade discusses an opening device in FIG. 19 that includes a throughhole 420 through the distal end portion and sized to extend above the upper surface 418 of the package 400. Such a throughhole allows the package to be displayed on hooks at the point of sale. Use of the throughhole during opening provides "*tactile feel between the thumb and selected opposing*

finger . . . which may in many instances improve the ability to *grip and hold* onto the opening device in opening the package.” (emphasis added). (See col. 13, lines 19-24). The package in Wade is opened when the film fractures or breaks, as at 430, thereby creating an opening in the package (See col. 14, lines 32-33). Applicant further notes that the effectiveness of this embodiment is dependent on the relationship between the product contained within the packaging material and the packaging material itself such that the packaging material should conform closely to the product. “It is only after much, if not all, of the slack is taken up at the region of interest that the lever will begin to induce stresses in the packaging material which result in the package being torn open.” (See col. 13, line 67 through col. 14, line 12).

Even though Wade provides a throughhole, this feature does not eliminate the need to “grip and hold” the opening device, i.e., utilize a pinching force, during opening of the package. In contrast, a pinching force is not required in Applicant’s invention as recited in the claims and explained in the specification. Since the *pull*-tab opening (in the *pull*-tab opener) is a hole large enough to be hooked with hooking means and pulled on to open the sealed container or to cause the sealed container to tear at the lines of weakness and create an opening as in the present invention, the force being used is necessarily a pulling force, not a pinch force as in Wade. According to the discussion in Wade, the primary purpose of the throughhole 420 is to display the product on hooks at the point of sale. During opening, the hole also allows “tactile feel between the thumb and the selected opposing finger.” However, the hole in Wade does not allow the user to hook the opener during opening of the package, as the “throughhole 420” is clearly not designed or intended to be large enough to be hooked and pulled on during opening. This is not a case of the reference not recognizing an inherent advantage of a particular feature. This feature is simply absent in Wade, as the user is still required to grip the opener between the thumb and finger, although, admittedly, the user can now feel their digits on either side of the throughhole 420.

In contrast, claim 11, as amended, recites a method of providing an enhanced opening system for a sealed container comprising providing a bag having lines of weakness and a pull-tab opener secured to the bag proximate to the lines of weakness, the pull-tab opener having a pull-tab opening integral therewith, wherein the pull-tab opening is a hole large enough to be hooked with hooking means and pulled on to open the sealed container without utilizing a pinch force;

and providing suitable markings to convey instructions to pull on the pull-tab opener to access contents within the sealed container without utilizing a pinch force, wherein the sealed container is adapted to be opened easily with the pull-tab opener by a person who follows the instructions conveyed by the markings. Also in contrast, claim 15, as amended, recites a method of providing an enhanced product removal system for a sealed container comprising providing a sealed container having lines of weakness; providing at least one product disposed within the sealed container; and providing a pull-tab opener secured to the sealed container proximate to the lines of weakness, wherein the pull-tab opener has a pull-tab opening configured as a hole large enough to allow a user to hook the pull-tab opener through the pull-tab opening and apply sufficient pulling force without utilizing a pinch force to cause the sealed container to tear at the lines of weakness and create an opening, further wherein the product is oriented proximate to the opening to facilitate easy removal of the product. Further in contrast, claim 36, as amended, recites a method of providing an enhanced opening system for a sealed container comprising providing a bag having lines of weakness and a pull-tab opener for opening the sealed container, the pull-tab opener secured to the bag proximate to the lines of weakness, the pull-tab opener having a pull-tab opening integral therewith, wherein the pull-tab opening is a hole large enough to be hooked with hooking means and pulled on in order to open the sealed container.

Clearly, having a hole large enough to be hooked by hooking means in order to open the package, thereby avoiding the need to use a pinch force is not just a matter of design choice. Such a feature, in combination with other recited features, provide a patentably distinct improvement over the prior art. (See also, for example, the specification at page 3, lines 6-14).

Chalin does not overcome the deficiencies of the primary reference. Chalin discusses a food package for heating and venting food contents contained within. The package has a lift tab 828 which serves as a means of grasping or pinching. The lift tab is a part of the package and is not separately secured to the bag. The lift tab has *no opening*.

Additionally, there is simply no suggestion in Wade *as to the desirability* of conveying instructions to use the pull-tab opener to access the package contents without utilizing a pinch force as suggested in the Office Action. Additionally, the lift tab of Chalin requires use of a pinch force, so does not teach or suggest such instructions: "Lift tab 828 serves as a means of *grasping* the appropriate part of cover 804 when a vent is to be formed as shown in FIG. 27. (col.

17, lines 8-10) (emphasis added). Assuming that the instructions of Chalin were as described in the Office Action, i.e., “to use the pull-tab opener to access the package contents without utilizing a pinch force,” such instructions would make the package of Wade inoperable because it is only with the use of a pinch force that the package of Wade can be opened, albeit with the opposing digits in contact with each other via the throughhole as they are pinched together. Therefore, there is no reasonable expectation of success even if the references were combined.

An additional requirement of the *prima facie* case is that the *references must teach or suggest all the claim limitations*. As noted above, the references fail to teach or suggest various elements of the claims, including, but not limited to, providing a pull-tab opening with a hole large enough to be hooked with hooking means and pulled on to open a sealed container without utilizing a pinch force; and providing suitable markings to convey instructions to pull on the pull-tab opener to access contents within the sealed container without utilizing a pinch force, wherein the sealed container is adapted to be opened easily with the pull-tab opener, as recited in claim 11, as amended. Nor does the combination of references recite all of the elements in claims 15 and 36, as amended, for all the reasons stated herein.

Since all of the elements of the claims are not found in the references, Applicant assumes the Examiner is taking official notice of the missing elements from an undisclosed source. Applicant respectfully objects to the taking of official notice, and pursuant to MPEP 2144.03, Applicant traverses the assertion of official notice and requests that the Examiner cite a reference that teaches the missing element. If the Examiner cannot cite a reference that teaches the missing element, Applicant respectfully requests that the Examiner provide an affidavit that describes how the missing element is present in the prior art. If the Examiner cannot cite a reference or provide an affidavit, Applicant requests withdrawal of the rejection and reconsideration and allowance of the claims.

The Office Action includes specific statements on pages 3-5 for various dependent claims. Again, if an independent claim is allowable, then any claim depending therefrom is allowable.

Regarding claims 13, 14, 16, 39 and 40, the Office Action asserts on page 3 that “Wade discloses the pull-tab opener is a reusable pull-tab opener with reusable securing means (Figs. 16-20D, via [peel] off glue 411).” Applicant respectfully traverses this assertion. The fact that

“lightly adherent peel-off glue 411” is used in the flexible distal portion of the opening device does not imply that the pull-tab opener is reusable. As Wade states, the flexible distal portion is preferably “temporarily” adhered to the package 400. The purpose for this temporary glue 411 is “done largely for packing and shipping these packages 400 in bulk, and, in this instance, as an aid in attractively displaying the product in its packaging.” (See col. 13, lines 5-11). There is simply no teaching or suggestion that the distal portion of the opening device allows the opening device to be reusable.

Regarding claim 22, the presence of at least one product within the sealed container of Wade does not render the invention obvious for all the reasons stated herein.

Regarding claims 23-25, Applicant respectfully traverses the assertion that it would have been obvious to modify Wade in view of Chalin’s method by inserting the recited products. Even if it were, packaging of the listed products does not render the invention obvious for all the reasons stated herein.

Regarding claim 26, the office Action asserts that it is inherent that Wade’s package is capable of containing articles of different types and sizes. Applicant respectfully traverses this assertion. Wade specifically states that the opening feature is dependent on the package contents such that the packaging material should conform closely to the product or products contained therein. Wade likely requires this feature because there are no lines of weakness to assist in opening (See FIGS. 19 and 20A-20D) as in the present invention. Given the dependency of the Wade package on the contents there, such that the content must be in close conformity with the package, it is not at all clear or “inherent” that articles of different types and sizes would work in Wade. Even if it were, this does not render Applicant’s invention obvious for all the reasons stated herein.

Regarding claim 27, the Office Action asserts that the pull-tab opening is a finger sized opening. Applicant respectfully traverses this assertion. Wade does not teach or suggest a “finger-sized opening.” Additionally, the reference in the Office Action to col. 8, lines 39-49 of Wade is a reference to a discussion on material types and not to the size of the opening as suggested in the Office Action.

Regarding claim 28, page 3 of the Office Action states that “Wade discloses that the hooking means comprises one to three fingers or [an] object, the object having a maximum

diameter not greater than about eight cm, (Figs. 19-20D, via holes 420).” Applicant also respectfully traverses this assertion as Wade clearly does not disclose hooking means of this size and specifically discusses reliance on “grasping means” to open the package, not “hooking means.” There is simply no teaching or suggestion that the throughhole 420 is any larger than is needed to hang on a typical small-diameter store hook. The small size of the throughhole is also consistent with the discussion in Wade that the user grasps the opening device and can “feel” the opposing digits through the throughhole. (See col. 13, lines 18-24).

Regarding claim 29, the Office Action asserts that Wade discloses that the lines of weakness are torn and an opening is created when the pull-tab opener is pulled. Applicant again traverses the assertion that Wade discloses lines of weakness and requests that the Examiner indicate where, specifically, Wade discusses lines of weakness in this embodiment or withdraw this assertion. As Wade discusses in col. 14, the package itself is simply torn open to create an opening. Unlike the present invention in which lines of weakness are relied on to open the package (See, for example, page 3, lines 6-10, page 9, lines 9-24 of specification), the ability to open the package in Wade is instead dependent on the package being essentially “full” and conforming to the products contained therein.

Regarding claim 30, whether or not the package contents are oriented proximate to the opening to facilitate easy removal does not render the invention obvious for all the reasons stated herein.

Regarding claims 19 and 31, 32, 33, 17 and 34, 18 and 35, Applicant again respectfully traverses the assertion that Wade teaches or suggests lines of weakness of any type in this embodiment. Additionally, in contrast to the assertion on page 4 of the Office Action, elements 412 and 414 are not “a portion of the lines of weakness [which] form a V-shape having a perforation junction or a U-shape.” Element 412 is a bonded region of the lever arm 406. Element 414 is the upper edge of the bonded region 412. Although dashed lines were used to represent the bonded regions and the region converges to a narrowed region or point, this does not indicate that these are lines of weakness. As Wade states, the tearing forces are concentrated or focused at this point. (See col. 13, lines 61-66). The additional assertions on page 4 are also traversed as Wade clearly does not have “two substantially parallel lines of perforations and a slit or third line of perforations located substantially perpendicular to and in between the two

substantially parallel lines of perforations at one end.” See also the definition of “lines of weakness” in the specification at page 5, lines 14-22. Applicant can further find no discussion in Wade of a six panel package and again requests the Examiner specify where, specifically, such information is present in Wade or withdraw this assertion, including the assertion that supposed lines of weakness are present on “two adjacent panels” or on a “single panel” as asserted on page 5 of the Office Action.

There is further no indication in either of the references of any appreciation of the problem being solved by Applicant's invention. By providing the enhanced opening system recited herein, a user can now, for the first time, use a pull-tab opener having a pull-tab opening (which is a hole) which is integral therewith and which is large enough to be hooked with hooking means and pulled on to open a sealed container with a pulling force *without utilizing a pinch force. This is not possible with the pull tabs in either of the references cited.* Again, a pinch force necessarily *requires* one to grasp with a thumb and one or more fingers. As noted in the specification, it is widely recognized that such grasping or pinching is quite difficult for consumers who have limited or reduced hand strength and dexterity due to age, physical illness or fatigue. (See specification, page 1, lines 19-21).

When a person, having the references before him and not cognizant of Applicant's disclosure, would not be informed that a problem (solved by Applicant's claimed invention) ever existed, such references (which never recognized the problem) *could not have suggested its solution.* Combining references in this manner is improper. *In re Shaffer*, 229 F.2d 476, 108 USPQ 326, 329 (CCPA 1956). Focusing on the obviousness of substitutions and differences instead of on the invention as a whole is a legally improper way to simplify the difficult determination of obviousness. *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 USPQ 81, 93 (Fed. Cir.1986).

Applicant respectfully submits that claims 11-40 are patentably distinct from the cited references, either alone or in combination. Claims 11-40, each viewed as a whole, are not suggested by the cited references and not obvious under 35 USC 103(a).

Reconsideration and withdrawal of this rejection is respectfully requested.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at 515-233-3865 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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